

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 15538 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

ANWAR AZIMBHAI SHAIKH

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 15538 of 2004
MR VA MANSURI FOR MR MTM HAKIM for Petitioner
MR IM PANDYA, AGP for Respondents

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 04/03/2005

ORAL JUDGEMENT

1. This Special Civil Application under Article 226
of the Constitution of India has been filed by the
petitioner challenging his detention in pursuance of the
order passed against him by Police Commissioner, Vadodara

City, on 11th October, 2004, in exercise of powers conferred upon him under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA Act for short). The petitioner is under detention as dangerous person from 11th October, 2004 in pursuance of the above order.

2. The grounds of detention as placed on record reveal that the detaining authority took into consideration two types of materials to arrive at subjective satisfaction. Firstly, the fact of filing of two crimes against the petitioner and secondly two incamera statements of the witnesses whose identities are not disclosed by the detaining authority, claiming privilege under Section 9(2) of the PASA Act.

3. Out of two crimes registered against the petitioner, first crime was registered before City Police Station, Vadodara on 4th May, 2004 for the offences punishable under Sections 307, 143, 147, 148, 149, 151, 152, 452, 336, 337, 427 of the Indian Penal Code and under Sections, 3, 4, 5 and 6 of the Explosives Substance Act. The second crime came to be registered against the petitioner on 25th September, 2004 before J.P.Road Police Station, Vadodara under Sections 364(A), 365, 368, 120(b) and 114 of the Indian Penal Code. The detaining authority thoroughly examined the investigation papers in both the crimes registered against the petitioner. The detaining authority concluded that the petitioner was a habitual offender.

4. The detaining authority also relied upon two incamera statements as recorded by the sponsoring authority on 5th October, 2004 and 6th October, 2004, as verified by the detaining authority on 10th October, 2004. The first witness referred to an incident occurred on 11th September, 2004. When the witness at about 5.00 P.M. was passing near Harani Road Rupam Cinema on his hero-honda motor cycle, he was called by the petitioner. The petitioner stopped him and insisted to deliver his motor cycle to the petitioner for the use of kidnapping a person. The petitioner stated to the witness that his motor cycle would be returned after an hour. The witness refused to deliver his motor cycle to the petitioner. On refusal by the witness, the petitioner got excited and started beating the witness, a crowd was gathered, but on noticing the persons gathered there, the petitioner with open knife rushed towards such persons to beat them, so the people started running helter skelter. The atmosphere of fear and terror was created and public order was disturbed. On account of fear of the

petitioner, the witness did not file any complaint before police.

5. The second witness referred to an incident occurred on 5th September, 2004. The witness was standing near Akota Garden, after parking his car the petitioner approached him and stated that the witness was making very good earning and in the business of witness, the witness should share 25% of the income of the witness to the petitioner, the witness refused. On refusal by the witness, the petitioner got excited and started beating the witness. On raising shouts for help by the witness, a crowd of persons of the locality was gathered there. On noticing the crowd, the petitioner rushed towards the crowd with weapons, so the persons started running helter-skelter. The public order was disturbed and the witness escape himself in his car.

6. Relying upon the above materials, the detaining authority came to the conclusion that the petitioner was engaged in illegal activities of committing crimes and was a habitual offender. The detaining authority concluded that the petitioner was a dangerous person within the meaning of the PASA Act. The detaining authority also concluded that the petitioner was headstrong and ferocious person and was keeping deadly weapons with him. It was alleged that the petitioner formed a gang of headstrong persons along with the gang was committing the offence and was in habit of picking up quarrels with innocent citizens and to beat them. On account of the activities of the petitioner, a fear and terror was spread and none dared to file any complaint against the petitioner. The detaining authority concluded that the activities of the petitioner were prejudicial to the maintenance of the public order and such activities were required to be prevented forthwith. After considering other alternative remedies available against the petitioner under the general law, the detaining authority came to the conclusion that there was no other alternative, except to detain the petitioner under the PASA Act as dangerous person. The detaining authority, therefore, passed an order of detention of the petitioner as aforesaid, which is under challenged in this petition.

7. Learned advocate Mr.V.A.Mansuri for learned advocate Mr.M.M.Tirmizi for the petitioner and learned AGP Mr.I.M.Pandya for the respondents were heard at length. The affidavit-in-reply as filed by the detaining authority and placed on record by the learned AGP, is taken into consideration.

8. Out of various grounds urged on behalf of the petitioner to challenge the order of detention as opposed and controverted by the learned AGP, it appears that this petition can be examined and disposed of on the sole issue that whether the detaining authority applied mind properly to the relevant material placed before him to arrive at subjective satisfaction.

9. From the grounds of detention, it becomes clear that in the first offence registered before the City Police Station, Vadodara, the petitioner was released on anticipatory bail, while in second crime registered against the petitioner before J.P.Road Police Station, Vadodara, the petitioner had been in judicial custody from 25th September, 2004. The petitioner was also in judicial custody in this crime when the order of detention was executed upon him. In this respect, the detaining authority reached to the subjective satisfaction that though the petitioner was in judicial custody when the order of detention was served upon him, but the petitioner was likely to move an application for bail at any time in the said crime and was likely to be released on bail by competent Court. The detaining authority also reached to the subjective satisfaction that on so releasing on bail, the petitioner was likely to continue his illegal activities.

10. The facts of the present case are squarely covered by the decision of the Apex Court in the matter of Amritlal and other Vs. Union Government through Secretary, Ministry of Finance and others, reported in AIR 2000 (1) S.C. 3675, wherein the Apex Court observed that there must be cogent materials before the officer passing the detention order that the detenu was likely to be released on bail. The inference must be drawn from the available material on record and must not be the ipse dixit of the officer passing the order of detention. Likelihood of detenu's moving an application for bail was not held a cogent material and the detention order based on such material was held liable to be quashed.

11. In the present case, from the grounds of detention and the papers along with such grounds placed on record and served upon the detenu, it becomes clear that no material at all was placed before the detaining authority to infer that the petitioner was likely to file an application for bail and was likely to be released on bail by the Court. True it is that the order of detention can be passed and executed against the detenu, when the detenu is in custody, than it is necessary to

arrive at subjective satisfaction that the custody of the detenu was likely to be ended, the detaining authority must rely upon a cogent material. In the present case, though the detaining authority has relied upon an application for anticipatory bail filed by the detenu in the first case registered against him and the order passed thereon, but such material cannot be said to be a cogent material to infer that, in the second case also there was likelihood firstly of filing of an application for bail by the petitioner and that the petitioner was likely to be released on bail by the Court. The conclusion arrived at by the detaining authority firstly in respect of the fact that the petitioner was likely to be filed an application for bail and secondly that on so filing an application for bail, he was likely to be released by the Court, is based, in fact, on no material at all let alone in a cogent material. The inference drawn by the detaining authority that on releasing the petitioner on bail, he was likely to continue his illegal activities, thus, is vitiated on account of absence of any such material placed before the detaining authority. The subjective satisfaction reached by the detaining authority in this respect is not valid, legal and in accordance with law. The order under challenge, therefore, is required to be quashed and set aside on this ground alone.

12. In the result, the petition is allowed. The order passed by the Police Commissioner, Vadodara City on 11th October, 2004, against the petitioner in exercise of powers under Section 3(1) of the PASA Act is hereby quashed and set aside. The detenu ANWAR AZIMBHAI SHAIKH is hereby ordered to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule is made absolute. Direct service is permitted.

[J. R. VORA, J.]

(vijay)